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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,098	02/06/2004	Nicholas P. Van Brunt	7175-74405	8362
23643	7590	01/24/2005		
BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			EXAMINER PHAM, HUONG Q	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/774,098	VAN BRUNT ET AL.	
	Examiner Huong Q. Pham	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1- 33 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1- 33 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Note that applicant needs to provide the non-patent documents indicated in the form 1449 if applicant wishes for these documents to be considered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1- 33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1- 14 of U.S. Patent No. 6,471,663 in view of Warwick et al . Warwick et al teaches that shell 14 maybe made of rigid material or having pockets with rigid plates so that the expansion forces of the bladder are directly inwardly against the chest of the patient to concentrate the forces and prevent the vest from expanding outwardly. In view of the teaching of Warwick et al , it would have been obvious to an ordinary skill in the art at the time the invention was made to provide rigid front panel to concentrate the forces inwardly against the patient's

chest and provide a more stable support vest for the patient. Also, note that " rigid " is a relative term. As for claims 2 – 7, 11, 13, 18 –19, 21 –22, 26-27, 29 – 30, the provision for the shape or the exact dimensions of the vest to accommodate the size of an average person, or for the material of the vest based on its well-known properties, is well within the realm of an ordinary skilled in the art , and does not provide any unobvious result, and therefor is not patentable over prior art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akerman et al in view of Warwick et al. As for claim 1, Akerman et al teaches a pneumatic chest compression vest comprising a front panel 8 having an outer surface and an inner surface and a central portion and side portions, a flexible air bladder 11 , an air port 20, means 17, 18 for positioning the front panel 8 over a patient's chest. Warwick et al teaches oscillatory chest compression apparatus with shell 14 , bladder 16, plural air ports . On lines 62- 68 (column 4) and lines 1-2 (column 5) , Warwick et al teaches that shell 14 maybe made of rigid material or having pockets with rigid plates so that the expansion forces of the bladder are directly inwardly against the chest of the

patient to concentrate the forces and prevent the vest from expanding outwardly. In view of the teaching of Warwick et al , it would have been obvious to an ordinary skill in the art at the time the invention was made to provide plural airports and rigid front panel for the vest of Ackerman to concentrate the forces inwardly against the patient's chest. Also, note that " rigid " is a relative term. As for claims 2-4, 7- 9, 11-12, 17, note figure 1 of Akerman. As for claims 5 -6, 13, the provision for the exact dimensions is well within the realm of an ordinary skill in the art, and does not provide any unobvious result, and therefore is not patentable over prior art . It is obvious to an ordinary skill in the art to provide dimensions which are within the range of the size of the average person. As for claims 10, 18, any conventional material used to make up the vest based on its well-known properties would have been an obvious provision. As for claims 14- 15 , note the that back portion of the vest of Akerman et al and elements 16 together forming a belt which is attached to one side of the front panel and wrapping around the patient's back and over the outer surface of the front panel. As for claim 16, note suspenders 17, 18 of Akerman. As for claims 19 – 22, note the comments above relative to claims 1-18. As for claims 23 – 24, 26 – 33, note that the device of Akerman et al and Warwick et al teaches the recited steps for mounting and using the device. As for claim 25, crossing the shoulder straps in front of the vest is a conventional way of securing the vest to provide both vertical restraining forces as well as lateral restraining forces. This provision does not provide any unobvious result, and therefore is not patentable over prior art.

This is a continuation of applicant's earlier Application No.09/387,319. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272 - 4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 20, 2005

managing


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

1/21/05